

Journal of Comparative Urban Law and Policy

Volume 1
Issue 1 *Study Space IX Cape Town, South Africa*

Article 16

2017

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Recommended Citation

Binder, Denis (2017) "Some Rough Historical Parallels Between South Africa and the United States," *Journal of Comparative Urban Law and Policy*: Vol. 1 : Iss. 1 , Article 16.
Available at: <https://readingroom.law.gsu.edu/jculp/vol1/iss1/16>

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SOME ROUGH HISTORICAL PARALLELS BETWEEN SOUTH AFRICA AND THE UNITED STATES

Denis Binder¹

I. INTRODUCTION

The sleepy passenger awakens on the plane. The seatmate's video screen shows the end of a movie or TV show with a camera panning over an immaculate suburb with beautiful lawns and detached homes. Then it pans over a highway. There's no closing credits though; that's surprising.

Shanties appear on the other side of the highway. Then you realize you're viewing the plane's approach into Cape Town International Airport through the plane's nose camera. The shanties go up to Cape Town's airport and line the road leaving the airport.

The approach is the first clue that South Africa is different from everything you are familiar with in airports and cities. Shanties rather than commercial structures circle the airport. The highways and railroads were clearly designed to create spatial division between racial groups.

The contrast between the Republic of South Africa and the United States of America is glaring. Yet a study of South Africa's troubled history shows disturbing parallels with eras in American history.

South Africa's development shows a long term conflict between the white settlers and the indigenous black population. The United States racial history has more tangents than South Africa's. It involves not only the indigenous Native Americans (the Indians), but also the black slaves and their descendants, and Asian immigrants. We are well aware of the Civil Rights struggles of the African Americans to achieve equality, but much more unfamiliar with the struggles of America's Asian immigrants to achieve equality.

Societies, whether kingdoms, dictatorships, or democracies, often encounter similar problems, such as urban sprawl, infrastructure, population pressures, sanitation, transportation, and conflagration. They frequently confront similar "problems" in similar ways at similar stages in their evolution.

The purpose of this article is not to fully analyze all the nuances, permutations and other sordid aspects of Apartheid, but those practices which overlap the American experience.

¹ Professor, Chapman University Dale E. Fowler School of Law. I am not a sociologist and do not profess to present this paper as a sociology paper. This paper is based on my impressions.

II. THE DEMOGRAPHICS OF SOUTH AFRICAN CITIES

The historical development of South Africa's cities resulted in an affluent white core with Africans² residing outside the core, which was the planned outcome of Apartheid³. The African communities were displaced from the city cores. Predominately non-white communities would be moved out and away from the white neighborhoods.

A. DISTRICT 6 IN CAPE TOWN AND URBAN RENEWAL IN THE UNITED STATES

Apartheid was transformative in the cities. The onset of Apartheid in South Africa resulted in moving Africans to "native homelands," Bantustans, some of which spun off as quasi-independent countries. Predominately black communities in major cities would thereby be removed with the residents relocated.

District 6, adjoining Cape Town's downtown, was such a community.⁴ Plans were drawn up to raze District 6 and then renew the land. One stated purpose was to eliminate "urban blight" in the well-established community.

District 6 was proclaimed a "Whites Only Area" on February 11, 1966. The residents were given a take it or leave it offer. 60,000 residents were quickly evacuated. It was the largest displacement in the Western Cape. The vibrant district was razed, but the urban renewal sputtered out, leaving a vast tract of open space next to downtown.⁵ Many of the displaced residents found themselves in the Cape Flats, a low-lying area subject to frequent flooding.

The Land Act of 1994, the Reclamation of Land Rights Act, attempted to redress the land wrongs of Apartheid. The consequence has been the filing of hundreds of thousands of claims,⁶ often tying up ownership rights in District 6. The

² The word "Africans" refers to the native population of South Africa. The United States is often referred to as "America."

³ Apartheid is an Afrikaner word meaning "separateness."

⁴ Similar communities were Sophiatown in Johannesburg and Cato Manor in Durban.

⁵ Apparently developers were scared away by protestors, Rashid Fataar & Brett Petzer, Cape Town's Anti-Apartheid Urban: Reclaiming a City from a History of Hate, <https://nextcity.org/features/view/cape-town-anti-apartheid-urban-plan> (May 19, 2014)

⁶ Claims are not just for the title claim of ownership, but also for the loss of use to the land. Thus claimants include owners, renters, employees, and family members.

razing of District 6 meant there were no homes to return to, but just a large amount of vacant land.⁷

An analogous development occurred in the United States with urban renewal, popular in the 1950s and 1960's. "Blighted" and slum areas, usually African American neighborhoods, were condemned through eminent domain, and then redeveloped into commercial operations, stadiums, and upscale housing.⁸

However, urban renewal was unsuccessful in pushing minorities out of several central cities.

Whites in many cities fled the city to the suburbs,⁹ leaving several cities with non-white majorities,¹⁰ and others with large ghettos and barrios.

B. THE BO KAAP NEIGHBORHOOD

District 6 had to go, but Bo Kaap stayed in an interesting twist. One goal of Apartheid was to keep ethnicities and religions in separate communities. Bo Kaap is a Muslim community on Signal Hill on the side of downtown Cape Town. It was settled by ex-slaves, the Cape Malays.¹¹ The community is noted by its bright, kaleidoscope of colors and cobbled streets. Bo Kaap was designated a "Malay Group Area" in 1957. Non-Muslims were forced to move from the community.

C. THE PASS LAW

South Africa's Pass Law was intended to control the African population, especially in employment possibilities and residences. Versions of the Pass Law go back to the early settlements. South Africa formalized the internal passport, the Pass

⁷ Christian Beyers, *Land Restitution's 'Rights Communities': The District 6 Case*, 33 *Journal of Southern Africa Studies* 267 (June 2007).

⁸ Urban renewal in the United States was facilitated by several federal statutes. The Housing Act of 1949, Pub. L. 81-171, 68 Stat. 590 (1954) provided federal funds for the acquisition of slum areas and the providing of new affordable housing. Private developers could construct new housing. The Housing Act of 1954 provided for FHA (Federal Housing Administration) backed mortgages, Pub. L. 83-560, 68 Stat. 590 (1954). The 1956 Supreme Court decision in *Berman v. Parker*, 348 U.S. 26 (1954) approved urban renewal. It was reaffirmed in *Kelo v. City of New London*, 545 U.S. 469 (2005). A few of the more famous sites erected under urban renewal are Lincoln Center in New York City and the Los Angeles Stadium in Chavez Ravine. See Don Normark, *Chavez Ravine*, 1949 (Chronicle Books 1999).

⁹ The phenomenon is called "White Flight."

¹⁰ Well known American cities with majority African American populations include Atlanta, Baltimore, Cleveland, Detroit, New Orleans, and Washington, D.C. The large cities with a majority Hispanic population include Anaheim, El Paso, Miami, San Antonio, and Santa Ana.

¹¹ The residents are the descendants of Muslim slaves brought from other African countries, India, Indonesia, and Malaysia.

Law, in the Population Registration Act of 1950. Africans had to carry their pass book at all times.¹² They needed permission to travel outside specified areas, such as their Bantustans. Thus, they lacked freedom of movement throughout South Africa. Hundreds of thousands of Africans were arrested and detained for violating the Pass Law.

The ancestors of today's African Americans were involuntarily brought to the United States as slaves. Their freedom of movement was non-existent. Indeed, runaway slaves could be restored to their owners. Emancipation gave them the freedom to leave their slave owners and move throughout the United States.

America's African Americans during the century of Southern segregation had a recourse unavailable to the Africans in South Africa under the Pass law. They could join the Great Migration to the Northeast, Midwest, and West.¹³ They would flee a sharecropping existence for the prospect of good-paying factory jobs. They might obtain employment in the great factories of Detroit and steel mills of Pittsburgh. Their children would be educated in the great public universities. They had the vote. A black middle class emerged in many cities.

De facto or de jure segregation often greeted them outside the South. Real estate deeds often had covenants restricting sales to African Americans or other minorities. Miscegenation laws also applied. Employment discrimination existed in many communities.¹⁴ The Great Migration did not guarantee economic success to the African Americans, as with immigration to the United States in general, but opportunities were available to them that did not exist in the South.

The 1986 repeal¹⁵ of the Pass Law unleashed a flood of African migration to the urban areas, in essence the periphery of cities, from the 10 Bantustans. 57% of the population lived in rural areas in 1980. 57% resided in urban areas in 2001.¹⁶

¹² The pass was much more than an internal passport. It contained many personal details.

¹³ See Isabel Wilkerson, The Warmth of Other Suns: The Epic Story of America's Great Migration (Vintage Books 2010). Estimates of the African Americans leaving the South range from 4.4 million to 6 million. *Id.* at 556, n. 9.

¹⁴ I remember the boycotts in 1963-64 in San Francisco of department stores and the auto dealerships on Van Ness Avenue's Auto Row to end their employment discrimination. Indeed, my first assignment as a photographer for the San Francisco Foghorn, the student newspaper at the University of San Francisco, was to take photographs of the picket lines in front of the Cadillac dealership.

¹⁵ Section 21 of the South Africa Constitution guarantees Freedom of Movement.

¹⁶ Cherryl Walker & Ben Cousins, Land Divided, Land Restored: Introduction 3-4 in Ben Cousins & Cherryl Walker, Land Divided, Land Restored: Land Reform in South Africa for the 21st Century (Jacana 2015).

Cape Town grew from a population of 1,925,000 in 1985 to 3,860,000 in 2016.¹⁷ The cities were unprepared for the influx of residents. Infrastructure did not exist. The housing stock was squalid.

D. THE POVERTY OF THE SHANTIES

Keys to the climb out of poverty are housing, transportation, water and sanitation, health, education, utilities, social protections, and opportunity. The shanties lack the keys; many amenities of civilization, such as potable water, electricity and toilets are lacking. The infrastructure taken for granted in major cities doesn't always exist. Residents often have to walk to communal toilets with safety risks due to criminal activity. They face challenges in access to transportation, technology, government, utilities, employment, and the opportunity to escape the shanties. Challenges exist in public housing and public health.

Rapid urbanization defies and defeats the best urban planning and building codes. It becomes unplanned, mindless, and makeshift. Severe problems exist in roads, transportation, mass transit, water, drainage, electricity, sewage, public health, air and water quality, and housing. Employment opportunities are scarce. The end of the pass law accelerated the migration from rural areas to the cities. The historic norm for such phenomenon is that the rapid urbanization occurs in cities unprepared for the rapid influx of residents. They moved into tenements in American cities, such as New York. The owners of these buildings were known as "slumlords." In South Africa they often ended up in shanties in low lying areas subject to periodic flooding.

Sadly, generations of African Americans have been economically trapped in the cities' ghettos even though many have benefitted from America's upper mobility. The waves of immigrants to America over a century ago found housing in tenements and then often moved out and up in society. The Africans found shanties on the outskirts of the cities in South Africa, and often remained there.

E. THE RISKS OF FLOODING

The Africans displaced from District 6 were moved to the Cape Flats, which were nicknamed "Apartheid's Dumping Grounds" as the appropriate dumping

¹⁷ <http://worldpopulationreview.com/world-cities/cape-town-population>. The population was 42.4% colored, 38.6% black African, 15.7% white, 1.4% Asian or Indian and 1.9% other.

ground for non-whites.¹⁸ About 88,000 households reside in the Cape Flats, which has a high incidence of annual flooding.¹⁹

Affluent persons prefer to leave frequent flood zones to the less affluent. The high density of the Cape Flats is prone to flooding, due to rainfall, heavy runoff from the mountains, high ground water levels, sandy soil, low lying, undulating topography, poor and blocked drainage.²⁰

The phenomenon of poor neighborhoods being subject to high flooding risks is not limited to South Africa. Many incidents of frequent flooding exist in the United States. The American city of New Orleans lies below sea level and has been “protected” by levees almost since its birth. The Lower Ninth Ward was flooded out by Hurricane Katrina. It had similarly flooded in the past when the levees did not save it.

Flood insurance in the United States is available from the federal government. America has not solved its recurrent flooding episodes. The United States National Flood Insurance Program was \$23 billion in arrears as of April 2016, as claims repeatedly exceed premiums.²¹

III. THE AMERICAN INDIANS

Both the white settlers in South Africa and the American colonies encountered indigenous populations. The separate American colonies, succeeded by the United States, had to confront the indigenous population, the Indians.²² The Americans resorted to conquest, friendship and treaties, followed by reservations in the 1800's. The Indians would be moved to reservations removed from white populations. The reservations could be created by treaty or by executive order of the President.²³

¹⁸ <http://www.cnn.com/2016/01/26/travel/cape-town-townships/>

¹⁹ I. Deportes, J. Waddell, & M. Hordjin, *Improving Flood Risk Governance Through Multi Stakeholder Collaboration: A Case Study of Sweet Home Informal Settlement Cape Town*, 98 South African Geographical Journal 61, 67 (2016)

²⁰ Laura Drivdal, *Flooding in Cape Town's Informal settlements: Conditions for Community Leaders to Work Towards Adaptation*, 98 South African Geographical Journal 21, 26 (2016); Gina Ziervogel, et al, *Flooding in Cape Town's informal settlements: barriers to collaborative urban risk governance*, 98 South African Geographical Journal 1, 5 (2016).

²¹ United States General Accounting Office, *Flood Insurance – Potential Barriers Cited to Increase Use of Private Insurance* (GAO-16-611, June 2016).

²² The Indians are commonly referred today as Native Americans or First Nations.

²³ Congress banned future treaties with the Indian tribes in 1871, 25 U.S.C. §71 (1871).

The tribes left behind their traditional lifestyle as they were removed to the reservations, often lacking resources, away from the settlers. Most of the reservation Indians were living in poverty and confined in the early years to the reservations, often with corrupt government agents. Indeed, the Bureau of Indian Affairs instituted a pass system whereby the tribal members needed a pass to go off the reservation.

The early reservations and the BIA pass system echoed South Africa with the Bantustans and the Pass law.

However, unlike the Africans on the Bantustans under the Pass Law, the Indians could later move off the reservations into the cities. They were also able in their status of dependent sovereign nations, often exempt from state regulation, in the late 20th Century to establish smoke shops²⁴ and bingo parlors and then casinos.

The reservations, whether established by treaties or executive order,²⁵ were able to assert traditional hunting²⁶ and fishing rights,²⁷ as well as water rights,²⁸ often to the detriment on non-tribal white hunters and fishermen, even if detrimental to the rights of non-Indians. Federal District Judge George Boldt held the Indians were entitled to 43% of the Puget Sound salmon run, which was highly detrimental to the non-Indian commercial fishermen.²⁹

²⁴ The “smoke shops” could sell tobacco products and alcoholic beverages free of state taxes.

²⁵ The vagaries of executive order reservations are shown by the experience of the Colvilles, which were 12 different bands thrown together on a reservation. President Grant initially established the reservation on April 9, 1872. Settlers vociferously complained because the lands were very productive. President Grant moved the boundaries three months later on July 2, 1879. The Tribe and the government agreed in 1891 that the Tribe would cede the northern half of the reservation to the government. Congress approved the transaction in 1892, 27 Stat. 62.

²⁶ *Antoine v. Washington*, 420 U.S. 194 (1975). The Supreme Court held Indian treaties are to be construed in favor of the Indians. *Id.* at 199.

²⁷ *Puyallup Tribe v. Department of Game*, 391 U.S. 392 (1968); *Department of Game v. Puyallup Tribe*, 414 U.S. 44 (1973); *Puyallup Tribe v. Department of game*, 429 U.S. 976 (1976); *Minnesota v. Mille Lac Band of Chippewa Indians*, 526 U.S. 172 (1999)

²⁸ *United States v. Winans*, 198 U.S. 371 (1905); *Winters v. United States*, 207 U.S. 564 (1908)

²⁹ *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff’d* 520 F.2d 676 (9th Cir. 1975), *cert. denied* 423 U.S.1086 (1976).²⁹ I remember the substantial opposition in Washington State to District Judge George Boldt’s affirming the fishing rights of the Puget Sound tribes. Bumper stickers in 1976 said “1776 King George III, 1976 King George Boldt” and “Save the Salmon, Can Judge Boldt.”

Other statutes have been enacted to protect the rights of the Indians. For example, Congress enacted the Indian Civil Rights Act of 1968 to guarantee the Indians basic civil rights in their tribal governments.³⁰

Congress in 1946 created the Indian Claims Commission to resolve claims by the Indians against the United States.³¹ Most were land claims. The statute provided that the claims would be satisfied with monetary compensation and not land restoration. Congress transferred the remaining claims to the United States Court of Claims in 1978.³² The Commission reported in its final report that it had paid out \$818,172,606.64 in judgments.³³

A. VOTING RIGHTS

A country cannot be a true democracy until the vote is extended to all citizens, regardless of race, sex, religion, or ethnicity. Both The Union of South Africa³⁴ and the United States of America lagged in granting the vote to their black citizens. Segregation existed in South Africa prior to Apartheid. Alan Paton's great novel, *Cry, the Beloved Country*, alerted the world to the evils of South African segregation. It was published in 1948 shortly before the electoral triumph of the National Party and the imposition of Apartheid. At one time the decision to let the Africans vote was a decision of the provinces. A few Africans could vote in the Cape and Natal provinces prior to 1936. The Representation of Natives Act stripped all Africans of the vote in that year. The ban remained in effect until 1994 when universal suffrage was restored.

Only about 5% of the United States population, white male property owners, had the right to vote when the United States Constitution was adopted. The United States struggled with granting voting rights for women, African Americans, Indians, and Asian immigrants. Universal suffrage was obtained before the end of the 20th Century.

³⁰ 25 U.S.C. §§1301 et seq.

³¹ 60 Stat. 1049 (1946).

³² P.L. 94-465 (1978).

³³ United States Indian Claims Commission, August 13, 1946 – September 30, 1978: Final Report at 125 (1979).

³⁴ The Union of South Africa was formed on May 31, 1910 with the unification of the two British Provinces, The Cape and Natal, and the two Afrikaner states, The Transvaal and the Orange Free State. It became the Republic of South Africa on May 31, 1964.

The Indians also had difficulty acquiring voting rights.³⁵ States usually denied them the right to vote because they were non-citizens of the United States. Individual tribes were granted the right to vote, but no general franchise existed.

Congress in 1924 in the Indian Citizenship Act attempted to resolve the issue. The statute provided: “All non-citizen Indians born within the territorial limits of the United States, be, and they are hereby declared to be citizens of the United States.”³⁶

However, several states demurred and continued to deny Indians their voting rights. Congress finally resolved the issue in the Voting Rights Act of 1965.

“No voting qualification or prerequisite to voting, or standard, practice, or procedure, shall be imposed or applied by a State, or political subdivision in a manner which results in a denial or abridgement of the right to ... vote on account of race, color, or language minority status.”³⁷

While the statute was prompted by the Southern discrimination against African Americans, Congress defined “language minority status” was defined to include American Indians, Asian Americans, Alaskan Natives and those of Spanish Heritage.³⁸

IV. THE CIVIL RIGHTS MOVEMENT IN THE UNITED STATES

Societies who wronged members of their communities, such as ethnic minorities, can also redress the grievances and offer assimilation into the broader society. The ancestors of most of today’s African Americans were brought to America as slaves.³⁹ The slaves were stripped of their culture, heritage, sense of community, roots, and often had their family unit shattered, unlike the Native Americans and the Africans in South Africa. The start of redemption was ending the slave trade and slavery.

³⁵ In general, see Danna R. Jackson, *Eighty Years of Indian Voting: A Call to Protect Indian Voting Rights*, 65 Montana L. Rev. 269 (2004).

³⁶ 8 U.S.C. §1401

³⁷ 52 U.S.C. §10301.

³⁸ 52 U.S.C. §10310(c)(3).

³⁹ President Obama is the son of a Kenyan father and former Attorney General Eric Holder and Secretary of State Colin Powell are the sons of Caribbean immigrants.

England banned the Atlantic Slave Trade in 1807.⁴⁰ The United States followed shortly thereafter,⁴¹ effective on January 1, 1808 when the 20 year Constitutional restriction on banning or restricting the Slave Trade expired.⁴² Whereas Great Britain banned the slave trade throughout its empire, the United States only banned the import of slaves. The domestic slave trade continued.

England in the famous 1772 Kings Bench case of *Sommersett v. Steuart*⁴³ held no basis existed in the common law of England or Wales for chattel slavery. Slavery was thereby banned in Great Britain, but not in the British colonies. Great Britain freed the slaves in its colonies in 1833,⁴⁴ but the United States tragically did not follow suit.

Instead the bloody 1861-1865 Civil War was fought with two results. The United States emerged as a unified country and the slaves were freed. The 13th Amendment formally abolished slavery⁴⁵ and the 15th Amendment guaranteed their right to vote.⁴⁶ The “Citizenship” Clause of the 14th Amendment overruled the contentious *Dred Scott* decision⁴⁷ which held that the slaves and their descendants were not citizens of the United States.

The Union Army, President Lincoln, the Emancipation Proclamation, and the 13th Amendment freed the slaves from the shackles of slavery, but did not free them from the shackles of poverty.

They had political rights, even election to both federal and state offices, in the defeated South during the post-war 1865-1877 Reconstruction Era. However, Reconstruction did not last and the South⁴⁸ “rose again” to discriminate against the

⁴⁰ An Act for the Abolition of the Slave Trade.

⁴¹ Act Prohibiting the Importation of Slaves of 1807, 2 Stat. 426.

⁴² U.S. Constitution Art. I, §9. The 20 year ban was part of the compromises necessary for the adoption of the Constitution. As a side note, the framers of the Constitution found slavery to be an abomination, but necessary for the economy of the southern states, again as part of the necessary compromises. We know the views of the framers because nowhere in the 1787 Constitution appear the words “slaves,” “slavery” or “slave trade.”

⁴³ 98 ER 499 (Kings Bench 1772).

⁴⁴ An Act for the Abolition of Slaves, 3 & 4 Will.4, c.73. Parliament provided compensation to the slave owners.

⁴⁵ U. S. Const., Amend. XIII., §13.

⁴⁶ Id. at Amend. XV, §1.

⁴⁷ *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

⁴⁸ References to the South include not only the 11 states of the Confederacy (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas and

former slaves. “Jim Crow” laws were enacted in the Southern States. These statutes basically perpetuated segregation. States banned miscegenation. They enacted poll taxes and literacy tests for voting. The effect was not only to exclude blacks from voting but also removed existing black voters from the voting rolls. The Ku Klux Klan (KKK) arose to enforce White Supremacy and segregation, often through violence.

The executive, judicial, and legislative branches of the federal government combined during the Civil Rights Movement⁴⁹ to strike down segregation. The Voting Rights Act of 1965⁵⁰ implemented the 15th Amendment. The African Americans finally gained the vote in the South and achieved political freedom a century after the Civil War.

The Civil Rights Act of 1964⁵¹ prohibited discrimination in employment and public accommodations, thereby opening the doors of opportunity. The combination of these acts though have not though removed poverty from America’s inner city ghettos.

As a sign of the dramatic changes in America, both the 1964 and 1965 statutes were passed by overwhelming bi-partisan majorities in Congress. President Lyndon Baines Johnson, who pushed both bills through Congress, was from Texas, a Southern state.

V. A SHORT HISTORY OF ANTI-ASIAN IMMIGRATION ANIMUS IN THE UNITED STATES

The United States is a country of immigrants. We are all the sons and daughters of immigrants, even the Native Americans whose ancestors crossed a land bridge from Siberia. The American people have come from all over the globe of different races, ethnicities and religions.

America has often held open a welcoming hand to immigrants. Emma Lazars’ famous poem, “The New Colossus” was inscribed on the Statute of Liberty. The most quoted lines are “Give me your tired, your poor, Your huddled masses

Virginia, but often the border states of Delaware, Kentucky, Maryland, Missouri, and West Virginia, many of which emulated and echoed the segregation of the South.

⁴⁹ People are always fighting for civil rights, but the Civil Rights Movement from 1954 to 1968 represents the breaking of Southern segregation and the effective granting of rights, especially, but not solely to the country’s African Americans.

⁵⁰ 52 U.S.C. §10101 et seq.

⁵¹ 78 Stat. 241. For an early discussion of the Civil Rights Act of 1984, see Denis Binder, Sex Discrimination in the Airline Industry: Title VII Flying High, 59 Cal. L. Rev. 1071 (1971).

yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door.”

Yet, America has also been lukewarm, exclusionary and sometimes offered a clenched fist to immigrants. Even legal immigrants may face discrimination. The reception of new waves of immigrants though has often been hostile. Even legal immigrants may face discrimination. The initial large wave of immigrants after the white Anglo-Saxon Protestants (WASPS) were the Irish Catholics. They still faced “NINA” (“No Irish Need Apply”) signs even at the turn of the 20th Century.

The Asian immigrants suffered nine decades of discrimination, often echoing that of South Africa. The Chinese came to California to join the 49ers mining for gold. They encountered substantial discrimination, which had an economic base. The Chinese were very proficient miners. The California Legislature responded by enacting a Foreign Miners License Tax of \$3/month. The tax applied primarily to the Chinese miners.

Chinese laborers were brought to America to construct the Central Pacific Railroad, which met the Union Pacific in Promontory Point, Utah, thus spanning the continent. The laborers would often work harder for lower pay than the white workers.

San Francisco barred Chinese from its public schools in 1850.⁵² An 1860 California statute excluded “Negroes, Mongolians, and Indians” from the public schools.⁵³

An 1854 California Supreme Court decision held a Chinese could not testify against a Caucasian. The opinion stated the Chinese were a “race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point, as their history has shown; differing in language, opinions, color, and physical conformation; between whom and ourselves nature has placed an impassable difference” and as such had no right “to swear away the life of a citizen” or participate “with us in administering the affairs of our Government.”⁵⁴

⁵² For an extensive look at California’s history of public education for Chinese Americans, see Joyce Kuo, *Excluded, Segregated and Forgotten: A Historical View of the Discrimination of Chinese Americans in Public Schools*, 5 Asian American L. J. 181 (1998).

⁵³ *Id.* at 190, n. 56.

⁵⁴ *People of the State of California v. George W. Hall*, 4 Cal. 399 (Cal. 1854)

California's 1879 Constitution denied the vote to "Idiots, insane persons, and all natives of China."⁵⁵ California closed several professions, such as law, medicine, pharmacy, veterinary, and hairdressing to the Chinese.⁵⁶

The Naturalization Act of 1870 granted citizenship rights to African Americans, but barred the Chinese from naturalization.⁵⁷ Congress enacted in 1872 the Chinese Exclusion Act which prohibited most Chinese from immigrating to the United States.⁵⁸ The Immigration Act of 1924 extended the restrictions to Japanese and other Asian immigrants.⁵⁹ The ban on naturalization of Asians ended with the Magnuson Act of 1943,⁶⁰ which represented the reality that the Chinese were allies of the United States in World War II against the Japan.

California followed the lead of Washington and Oregon in 1913 in enacting its Alien Land Act,⁶¹ which barred "aliens ineligible for citizenship" from owning land or leases of over 3 years.⁶² It was aimed at the Chinese immigrants, who were barred by Congress from naturalization. The land ownership prohibition was upheld by the United States Supreme Court in *Porterfield v. Webb*⁶³ in 1923.

San Francisco tried to ban Chinese laundries. The Supreme Court held the measure unconstitutional in *Yick Woo v. Hopkins*,⁶⁴ holding the equal Protection Clause of the 14th Amendment applies to Chinese Americans.

Part of the greatness of America is its ability to evolve and grow. The nadir of the anti-Asian discrimination was the World War II Japanese internment camps.

⁵⁵ *Kuo, supra* n. 48 at 188, n. 41.

⁵⁶ *Id. at* n. 43.

⁵⁷ Chinese Americans born in the United States have birthright citizenship in the United States. *In re Look Tin Sing*, 21 F. 905 (C.C.D. Cal. 1885). It's their parents who could not become citizens.

⁵⁸ 22 Stat. 58 (1882). The Act was for ten years, but was extended. The Supreme Court upheld the act in *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

⁵⁹ Pub. L. 69-139, 43 Stat. 153 (1924).

⁶⁰ 78 Pub. L. 199, 57 Stat. 600 (1943).

⁶¹ Cal. Stats. 1923 at p. 206.

⁶² For a discussion of the Alien Land Exclusion Acts, see Edwin G. Ferguson, *The California Alien Land Law and the Fourteenth Amendment*, 35 Cal. L. Rev. 61 (1947) and Nicole Grant, *White Supremacy and the Alien Land Laws of the Washington State*, https://depts.washington.edu/civilr/alien_land_laws.htm

⁶³ 263 U.S. 225 (1923).

⁶⁴ 118 U.S. 356 (1886).

On first blush South Africa and the United States would have no comparison with internment/concentration camps. History tells us differently. The English pursued a scorched earth policy to defeat the Boers in the Second Boer War. The Boer women and children were placed in concentration camps pending the end of the war.⁶⁵ The death rate in the camps was high.

The United States in World War II interned the mainland Japanese American citizens in concentration camps.⁶⁶ The act had tremendous land use planning implications. The Japanese neighborhood, Japan Town, in San Francisco was in the Fillmore District. The African Americans moved into the available, inexpensive residences, quickly changing the demographics of the Fillmore. The Supreme Court upheld the internments.⁶⁷

A wave of Vietnamese refugees came to America three decades later after the Fall of Saigon. They did not face the discrimination of their Chinese and Japanese predecessors.

VI. NELSON MANDELA, F. W. DE KLERK, THE TRANSFER OF POWER, AND THE END OF APARTHEID

Apartheid was destroying the soul of South Africa just as slavery was splitting the United States a century earlier. Economic sanctions were damaging the South African economy. Prime Minister F. W. De Klerk led the Afrikaners to voluntarily cede power. The white voters of South Africa voted in a 1992 whites only referendum to end Apartheid. The ban on the African National Congress (ANC) was lifted in 1990 and a general amnesty granted.

The peaceful transfer of power from the white minority, police state to the African majority after 46 years of Apartheid is a modern miracle. Nelson Mandela and the Reverend Tutu preached reconciliation: Truth and Reconciliation Commissions - No executions; No mass incarcerations; No exiles;⁶⁸ No

⁶⁵ Richard Steyn, Jan Smuts: Unafraid of Greatness at 30 (Jonathan Ball Publishing at 30).

⁶⁶ A quirk in the internment policy was necessitated by the large Japanese American population in the Hawaii Islands. They were not interned, but the mainland Japanese Americans were.

⁶⁷ *Korematsu v. United States*, 232 U.S. 214 (1944).

⁶⁸ Clearly many whites, perhaps up to a million, voluntarily left South Africa, but they were not forced to leave. An estimated 233,609 South Africans emigrated from South Africa to the United States, United Kingdom, Canada, Australia, and New Zealand from 1989 to 1997. Robert Mattes, Jonathon Crush, and Wayne Richmond, *The Brain Gain: Skilled Migration and Immigration Policy in Post-Apartheid South Africa* 11 (2008)

confiscation of property;⁶⁹ No reparations. Conversely, a large number of American supporters of the British, “Tories,” voluntarily or involuntarily fled the 13 colonies in the wake of the British defeat.

The end of slavery in the United States and the end of Apartheid in South Africa did not end inequality. Just as freedom in 1865 to the slaves did not end inequality and poverty, the end of Apartheid and the peaceful transfer of political power to the majority African population could not but itself change the economics of South Africa or eliminate the effects of Apartheid. It provided an opportunity to rise from Apartheid, but was not a magic wand to transform ghettos in the United States and corrugated shanties in South Africa to quality housing. The white economic base persevered in an African constitutional democracy.

Segregation still exists in the United States but it is directed by economic status rather than ethnicity. Housing can be very expensive in the affluent suburbs due to restrictions, such as exclusionary zoning, large lot zoning, and setback lines. The affluent suburbs, just as many in the United States, especially Orange County, feature gated communities.

VII. LAND OWNERSHIP

The Native Lands Act of 1913 essentially limited the Africans to land ownership of 13% of the country's land. These tracts became the loci of the Bantustans, the African homelands, decades later. If land ownership is an indicia of a rising middle class and the rule of law, then the removal to the Bantustans was further restrictive in that much of the land was communally owned in the tribe.

The Act was amended in 1937 to prohibit Africans from acquiring land outside the preserves except from other Africans.⁷⁰

Political freedom from Apartheid or decolonization does not guarantee economic freedom. South Africa suffers from great inequality. Essential needs for a vibrant, production society include education, transportation

Transportation is a handicap for the shanty occupants. South Africa built a strong, but limited, infrastructure during Apartheid. The highways and trains went to the white areas, often leaving the African neighborhoods and communities with long, arduous bus rides. For example, a ride from Cape Town Airport to the downtown and tourist port area takes less than half an hour. The bus trip from the

⁶⁹ Unlike Zimbabwe, there was not a large transfer of white farms to Africans.

⁷⁰ Paul Hendler, The Right to the City: The Planning and ‘Unplanning’ of Urban Space Since 1913 at 88.

shanties takes substantially longer and is relatively costly.⁷¹ Very few of the shanty residents have cars so they are dependent on busses or jitneys.

By way of contrast, mass transit is generally very good in American cities. Commuting from the suburbs can take time though, but the suburbanites generally have cars they can use to commute in many cities.

VI. ECONOMIC GROWTH

The paradox in South Africa with the end of Apartheid is that the new freedom was followed by a substantial increase in unemployment. Political freedom did not lead to economic freedom for most of the Africans.

The key to economic prosperity and a rising middle class is to grow the economy faster than the adult population. South Africa's problem is that the population is growing faster than the economy. The population of South Africa in 1985 was 32,983,013. It jumped to 54,978,907 in 2016,⁷² a 66.7% increase in 25 years. The South Africa economy received a boost with the end of Apartheid and averaged 3.2% annually from 1995-2012, but was unable to absorb the large numbers of entrants into the work force.⁷³ The per capita GDP growth averaged 1.2% annually.⁷⁴ A more telling statistic is the drop in per capita domestic production measured in United States dollars from \$8,656 in 2011 to \$5,994 in 2015.⁷⁵ The lack of economic growth handicaps the growth of a South Africa middle class.

Several reasons exist for the paradox. The end of Apartheid resulted in large numbers of Bantustan residents seeking employment. They were mostly unskilled. In addition, a large number of women sought employment.⁷⁶ The unskilled workers were entering the job market when the employment prospects for unskilled workers was dropping. For example, employment in manufacturing dropped from 1.6

⁷¹ One study showed that those living in the outskirts of Cape Town spent 30-40% of their gross monthly income on travel costs with an average 1 hour 5 minutes commuting. Nisa Mammon, *Cape Town 2025: Urban Form and Infrastructure 1* (prepared for Islandla Institute)

⁷² <http://www.worldometers.info/world-population/south-africa-population/>

⁷³ The World Bank, *South Africa Economic Update: Focus on Inequality of Opportunity* viii (2012).

⁷⁴ Dani Rodrik, *Understanding South Africa's Economic Puzzles*, 16 *Economics of Transition* 769, 770 (2008).

⁷⁵ <http://www.focus-economics.com/countries/south-africa>

⁷⁶ Abhijit Banerjee, et al, *Why Has Unemployment Risen in the New South Africa*, National Bureau of Economic Research Working Paper 13167, <http://www.nber.org/papers/w13167> at 2,3.

million in 1990 to 1.2 million in 2004.⁷⁷ In addition, the mining and agriculture industries became much more efficient and used less labor.

South Africa's economy is heavily dependent on mineral extractions. Thus it is subject to the vagaries of the global economy.

Another reason for the drop in manufacturing is globalization in the form of low-wage competition by China in the textile industry. South Africa's minimum wage law made unskilled, labor intensive in some industries uncompetitive in the global marketplace.⁷⁸

VIII. CONCLUSION

Both countries had enlightened leadership to lead their countries out of their segregationist pasts. The end to Apartheid in South Africa and Jim Crow in the United States did not solve issues of economic inequality.

The United States and South Africa often applied similar practices in a history of discrimination. One measure of a society is its ability to overcome its past. The drafters of the United States Constitution in 1787 provided two features which allowed the young republic to outgrow its restrictive past. The first was the ability to amend the Constitution, pursuant to which women and African Americans were granted the vote. The second was an independent judiciary, which could issue a long series of opinions promoting equality and striking against segregation on the basis of race, religion, and gender.

No one legislative or judicial act ended the discrimination against women, African Americans, Asian Americans, and Native Americans. Problems of equality and inequality remain, as they do with every society. The United States has also invested tremendous sums in fighting poverty throughout the country.

The United States started removing its segregationist and racist practices while South Africa was implementing Apartheid. Not all problems, especially economic opportunity, have been resolved. Inequality remains a problem.

The United States has a more vibrant economy than South Africa. Education, housing, transportation, and opportunity remain continuing problems in South Africa. Freedom can unleash the human spirit, but won't unleash an economic revolution overnight.

⁷⁷ *Id.* at 783.

⁷⁸ See Celia W. Dugger, Wage Laws Squeeze South Africa's Poor, *New York Times*, Sept. 26, 2010, <http://www.nytimes.com/2010/09/27/world/Africa/27safrica.html>.